

**STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION**

In the Matter of:

WAYNE COUNTY,
Respondent-Public Employer,

Case No. C99 E-94

-and-

AMERICAN FEDERATION OF STATE, COUNTY,
AND MUNICIPAL, EMPLOYEES, and its LOCAL 3309,
Charging Party-Labor Organization.

APPEARANCES:

John L. Miles, Esq., Assistant Director, Labor Relations Division, for the Public Employer

Miller Cohen, P.L.C., by Bruce A. Miller, Esq., for the Charging Party

DECISION AND ORDER

On February 27, 2001, Administrative Law Judge Nora Lynch issued her Decision and Recommended Order in the above matter finding that Respondent Wayne County violated Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.210, by unilaterally accreting employees transferred from Recorder's Court to the Local 1659 bargaining unit, and by refusing to recognize and bargain with Charging Party American Federation of State, County and Municipal Employees, and its Local 3309. Respondent filed timely exceptions to the Decision and Recommended Order of the ALJ on March 22, 2001. Charging Party filed a brief in support of the Decision and Recommended Order and a request for oral argument on March 30, 2001. On September 14, 2001, Charging Party filed a motion to dismiss Respondent's exceptions.

After reviewing the exceptions, we find that oral argument would not materially assist us in deciding this case. Therefore, Charging Party's request for oral argument is hereby denied. We also reject Charging Party's motion to dismiss the exceptions filed by Respondent. The motion essentially repeats and, to some extent, expands upon the arguments which Charging Party made in its brief in response to the Employer's exceptions. Rule 67 of the General Rules and Regulations of the Employment Relations Commission, R 423.467, gives parties the right to file cross exceptions to the ALJ's recommended order and/or a brief in support of the ALJ's decision within 10 days after service of exceptions. However, the rules do not provide for the filing of additional pleadings once that 10-day period has expired, and Charging Party has not set forth any compelling reason which would justify consideration of its motion here. See e.g. *Univ of Michigan*, 2001 MERC Lab Op ___ (Case No. C00 A-7, issued March 1, 2001); *St Clair ISD*,

2000 MERC Lab Op ____, n 1 (Case No. CU98 H-44, issued March 9, 2000; *Univ of Michigan*, 1997 MERC Lab Op 671, 673, n 1; *City of Grand Rapids*, 1997 MERC Lab Op 358, 361; *Taylor School District*, 1994 MERC Lab Op 285, 289.

On exception, Respondent does not specifically allege that any of the ALJ's factual findings or legal conclusions were erroneous. Rather, the Employer's sole argument is that the ALJ "did not fully understand and appreciate the unique and uncertain positions the parties were placed in following the legislative mandated court reorganization of 1996." Thus, the exceptions fail to comply with Rule 66(2) of our General Rules and Regulations, which provides that exceptions must set forth specifically the question of procedure, fact, law, or policy at issue, identify that portion of the ALJ's decision to which objection is made, and state the ground for the exceptions, including citation of authority, if any. Nevertheless, we have carefully reviewed the record in this case, including the transcript and exhibits submitted by the parties, and agree with the ALJ's determination that Respondent violated PERA by unilaterally determining what bargaining unit is appropriate for the transferred employees. In 1997, Respondent extended voluntary recognition to Local 3309 as representative of the employees at issue in this case, and then bargained an extension agreement with Charging Party covering these employees. It is well-established that voluntary recognition, once granted, cannot be withdrawn by an employer absent a good faith doubt of the union's majority status based on objective considerations. See e.g. *Utica Comm Sch*, 1989 MERC Lab Op 80, 88; *Whyte Goose Inn*, 1981 MERC Lab Op 342. There being no allegation of any good faith doubt on the part of Respondent as to Charging Party's majority status, we hereby adopt the recommended order of the Administrative Law Judge as our final order in this case.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Chair

Harry W. Bishop, Member

C. Barry Ott, Member

DATED: _____

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

WAYNE COUNTY,
Respondent-Public Employer

- and -

Case No. C99 E-94

AMERICAN FEDERATION OF STATE, COUNTY,
AND MUNICIPAL EMPLOYEES (AFSCME), AND
ITS LOCAL 3309,
Charging Party-Labor Organization

APPEARANCES:

John L. Miles, Esq., Assistant Director, Labor Relations Division, for the Public Employer

Bruce A. Miller, Esq., Miller Cohen, P.L.C., for the Charging Party

DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

Pursuant to the provisions of Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, MSA 17.455 (10), this matter came on for hearing at Detroit, Michigan on December 10, 1999, and February 15, 2000, before Nora Lynch, Administrative Law Judge for the Michigan Employment Relations Commission. The proceedings were based upon unfair labor practice charges filed on May 26, 1999, and amended on November 24, 1999, by the American Federation of State, County, and Municipal Employees, and its Local 3309, alleging that Wayne County has violated Section 10 of PERA. Based upon the record, including briefs filed on or before June 1, 2000, the undersigned makes the following findings of fact and conclusions of law, and issues the following recommended order pursuant to Section 16(b) of PERA:

The Charge:

The amended charge reads as follows:

Employees who are represented by Michigan AFSCME Council 25 and its Local 3309 have been transferred to the office of the Wayne County Clerk. The County has bargained with the union in connection with these employees but, as of April 22, 1999, it has informed the union that they would no longer bargain in connection with the employees represented by AFSCME Local 3309 and that the County would unilaterally incorporate the employees represented by AFSCME Local 3309 into AFSCME Local 1659. A demand to bargain on the issue has previously been made and bargaining was ongoing until the subject letter which is attached hereto as Exhibit A and incorporated herein.[Letter of April 22, 1999]

Thereafter, sometime in October 1999, the employer unilaterally implemented a wage increase for the subject employees and is planning, on or about December 1, 1999, to change and/or modify health, dental and long-term disability benefits all without bargaining with the exclusive representative of the subject employees.

By this, and other conduct, the employer has gone to impasse on a permissive subject of bargaining and has otherwise violated the Act.

Facts:

In June of 1986, the international AFSCME union chartered Local 3309 as the exclusive representative of those court employees of the State Judicial Council working in Detroit Recorder=s Court and the Third Judicial Circuit Court (formerly Wayne County Circuit Court). Job titles represented included classifications in both civil and criminal divisions such as clerk, typist, social worker, and court reporter. Pursuant to 1996 PA 374, MCL 600.593(a), MSA 27A.5932, the Michigan legislature mandated a reorganization of the court system. As a result of this legislation, the State Judicial Council was abolished. The Third Circuit Court was expanded from the civil division and Friend of the Court to include the former Recorder=s Court, Family Court, and Juvenile Court. Fifty-seven employees who worked in the criminal division (Recorder=s Court) and were represented by Local 3309 were transferred to the jurisdiction of the Wayne County Clerk. The reorganization did not affect the work performed or the job location of these employees. Other court employees represented by Local 3309 remained under the jurisdiction of the Third Judicial Circuit Court. AFSCME Local 409 represented employees of the Juvenile Court. Approximately 10 of those employees were also transferred to the jurisdiction of Wayne County.

The reorganization legislation mandated that certain conditions be met. Subclause 11 of 600.593(a) provided that:

[Wayne County] shall assume and be bound by any existing collective bargaining agreement held by the former state judicial council and, except where the existing collective bargaining agreement may otherwise permit, shall retain the employees covered by that collective bargaining agreement. A transfer of court employees

shall not adversely affect any existing rights and obligations contained in the existing collective bargaining agreement.

In addition, Administrative Order No. 1998-5 provided that:

An employee who is transferred shall not, by reason of the transfer, be placed in any worse position with respect to worker's compensation, pension, seniority, wages, sick leave, vacation, health and welfare insurance, or any other terms and conditions of employment that the employee enjoyed as an employee of the former court employer. The rights and benefits thus protected may be altered by a future collective bargaining agreement.

There are approximately thirty-six bargaining units within Wayne County, including seven AFSCME locals. AFSCME Local 1659 represents a bargaining unit of approximately 3,300 Wayne County employees, which includes many job titles similar to those represented by Local 3309. Local 1659 does not represent court employees; the Local does represent approximately 30 employees who service the civil division courtrooms but who are not classified as court employees. Almost half of Local 3309 employees work in the criminal division; approximately ten of the Local 1659 members are assigned to the criminal division.

On November 21, 1997, the Wayne County personnel director sent the following letter to the Presidents of Local 1659 and Local 3309, which reads in pertinent part:

On November 3, 1997, the transfer of 57 employees from the Wayne County Circuit Court to the County Clerk's Department was effected in order to conform to the requirements of Public Act 374 of 1996. These employees will basically remain in the same work assignments and work locations, and will be inducted into the Wayne County Classified Service using the job title indicated for each employee on the attached list.

New position numbers will be established using the number series used by the County Clerk for budgetary purposes. Five (5) additional positions will be transferred to the County Clerk's budget although they are presently vacant.

We have determined that this group of employees most nearly corresponds to the community of interest recognized for the employees in the County Clerk's Department represented by Local 1659. However, because of the significant differences in wages, hours, and working conditions, we believe the best course of action extending a voluntary recognition for this group of employees would be to recognize Local 3309 as the representative for the current employees in these positions and Local 1659 for employees filling these positions as they are vacated.

As indicated in the above correspondence, there are many differences in the terms and conditions of employment between the Local 1659 employees and the Local 3309 transferred employees. Local 3309 employees have wage scales with much higher pay increases; the level of difference in wages is at least \$7000 in favor of Local 3309 employees. Benefits for Local 3309 employees, including health insurance, life insurance, and longevity pay, are greater. The transferred employees remain under the Michigan Public Employee Retirement system, while Local 1659 employees are covered by Wayne County's retirement system. Working conditions between the civil divisions and criminal divisions where Local 3309 employees work also differ. Criminal division employees must undergo special training to deal with criminal clientele and security issues. They must pass through metal detectors and register electronically when they enter and leave the building. There are separate personnel offices for the criminal and civil divisions in order to address the special needs and problems of the criminal division.

On January 28, 1998, the County and Local 3309 entered into a Memorandum of Agreement which extended the agreement between AFSCME Local 3309 and the State Judicial Council for Third Circuit/Recorder's Court employees, which had expired on September 30, 1997, until September 30, 1998. Shortly after the expiration of the extension agreement, on November 20, 1998, Huey Ferguson, Director of Labor Relations for the County, informed AFSCME Council 25 President Al Garrett by letter that it was the position of the County that all AFSCME bargaining unit positions in the Office of the County Clerk would be merged with Local 1659 on March 1, 1999. Garrett responded to this letter on December 7, 1998, objecting to what it termed illegal unilateral action by the County and suggesting that the issues raised by the court reorganization would best be addressed through negotiations or by review by MERC.

On April 22, 1999, Ferguson again wrote to Garrett, indicating that since discussions had failed to resolve the matter, effective June 1, 1999, all former employees of the Recorder's Court, Third Judicial Circuit, and Probate Court now in the office of the Wayne County Clerk would be accreted to AFSCME Local 1659 bargaining unit and placed in an appropriate County classified position. The County did not accrete the transferred Juvenile Court employees represented by Local 409 employees to Local 1659 but continued to recognize and bargain with Local 409 as their representative. In his memo Ferguson also indicated that dues deductions in favor of local unions other than Local 1659 would not be honored after that date. After payroll deduction ceased, the employees transferred from Recorder's Court voluntarily paid dues to Local 3309. The Local 3309 employees accreted to Local 1659 were assigned a seniority date of 9/30/97 and were not credited with time served prior to the court reorganization.

Discussion and Conclusions:

Wayne County maintains that it has not violated PERA by its accretion of the fifty- seven former Recorder's Court employees to Local 1659, since it is the only appropriate bargaining unit for these employees. Charging Party asserts that the County has already recognized and bargained with Local 3309 as their representative, and further, the County may not unilaterally decide what bargaining unit is appropriate for the transferred employees.

I agree with the position of Charging Party. The transfer of the fifty-seven former Recorder's Court employees was effective November 3, 1997. On November 21, 1997, the County extended voluntary recognition to Local 3309 as representative of these employees, at the same time acknowledging the significant differences between those employees and those in Local 1659. The County then bargained an extension agreement with Local 3309 which covered the fifty-seven employees. These actions by the County created a bargaining obligation with Local 3309 as representative of the transferred employees. Voluntary recognition, once granted, cannot simply be withdrawn by an employer. *Utica Comm Sch*, 1989 MERC Lab Op 80, 88; *Whyte Goose Inn*, 1981 MERC Lab Op 342. While it is true that the court reorganization presented unusual circumstances, the County had no right to alter unit placement without the Union's agreement or Commission order. This was clearly articulated by the Commission in *Michigan State Univ*, 1992 MERC Lab Op 120, 1993 MERC Lab Op 345,350, *affd* 455 Mich 863 (1997):

...bargaining unit placement is neither a mandatory subject of bargaining nor a matter of managerial prerogative but a matter reserved to the Commission by Section 13 of PERA. *Detroit Fire Fighters v Detroit*, 96 Mich App 543 (1980). *See also Northern Michigan University*, 1989 MERC Lab Op 139. That is, an employer may not alter bargaining unit placement unilaterally or after bargaining to impasse, but must either obtain the union's agreement to changes in bargaining unit composition or obtain an order from this Commission by filing [for] a unit clarification proceeding.

Reorganization or restructuring of an employer, particularly when it involves the courts,¹ presents unique and difficult problems with respect to representation rights, and it is the role of the Commission to resolve them. Under these circumstances, the Commission may take a different approach than it would in the initial structuring of a bargaining unit, taking into account factors such as the established representation rights of a particular union, bargaining history, the right of employees to have a voice in their representation, and most importantly, the overall stability of labor relations. *See, City of Lansing (Police Dept)*, 1999 MERC Lab Op 340, 350.

The County now bargains with over thirty units, including seven AFSCME locals. It continues to bargain with Local 409 as representative of Juvenile Court employees even after the transfer of some of those employees to Wayne County. Given the already existing fragmentation of units, it is not unduly burdensome to require the County to continue to recognize Local 3309 as representative of the fifty-seven transferred employees. Moreover, this

¹See, for example, *State Judicial Council*, 1983 MERC Lab Op 264, and discussion therein regarding court reorganization pursuant to 1980 PA 438, MCL 600.9101, MSA 27A 9101.

insures compliance with the court reorganization statute and the Michigan Supreme Court administrative order mandating that employees not lose existing rights and benefits.

Based on the above discussion, I find that by unilaterally accreting employees transferred from Recorder's Court to the Local 1659 bargaining unit, and by refusing to recognize and bargain with AFSCME Local 3309 as representative of those employees, the County has violated its bargaining obligation under PERA. It is therefore recommended that the Commission issue the order set forth below:

RECOMMENDED ORDER

Respondent, Wayne County, its officers and agents, are hereby ordered to:

1. Cease and desist from recognizing AFSCME Local 1659 as representative of the Recorder's Court employees transferred pursuant to 1996 PA 374, MCL 600.593(a), MSA 27A.5932.
2. Recognize Charging Party AFSCME Local 3309 as bargaining representative for the transferred Recorder's Court employees, and upon demand, bargain with Charging Party concerning terms and conditions of employment for these employees.
3. Make the above employees whole for any wages or benefits lost as a result of its unlawful action, including restoration of their former seniority.
4. Post the attached notice to employees in conspicuous places on Respondent's premises for a period of 30 consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Nora Lynch
Administrative Law Judge

Dated:

NOTICE TO EMPLOYEES

AFTER A PUBLIC HEARING BEFORE THE MICHIGAN EMPLOYMENT RELATIONS COMMISSION, WAYNE COUNTY WAS FOUND TO HAVE COMMITTED AN UNFAIR LABOR PRACTICE IN VIOLATION OF THE MICHIGAN PUBLIC EMPLOYMENT RELATIONS ACT (PERA). PURSUANT TO THE TERMS OF THE COMMISSION ORDER WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL cease and desist from recognizing AFSCME Local 1659 as representative of employees transferred from Recorder's Court pursuant to 1996 PA 374, MCL 600.593(a), MSA 27A.5932.

WE WILL recognize AFSCME Local 3309 as bargaining representative for these employees and, upon demand, bargain with AFSCME Local 3309 concerning their terms and conditions of employment.

WE WILL make these employees whole for any benefits lost as a result of our unlawful action, including restoration of their former seniority.

WAYNE COUNTY

By

Dated:

(This notice shall remain posted for a period of thirty (30) consecutive days and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the office of the Michigan Employment Relations Commission, State of Michigan Plaza Building, 1200 Sixth, 14th Floor, Detroit, MI (313) 256-3540.)